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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Delta-21 Resources, Inc.

File: B-403586

Date: November 10, 2010

John C. Burgin, Jr., Esq., Kramer Rayson LLP, for the protester.
Jennifer M. Miller, Esq., and Anna G. Kizer, Esq., Wyrick Robbins Yates & Ponson,
and Norman H. Singer, Esq., Singer & Assoc., for Information Systems and Networks
Corporation, the intervenor.

Melissa McClellan, Esq., Department of Agriculture, for the agency.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency reasonably evaluated the awardee's proposal under the solicitation's price factor where the record reflects that the agency reasonably considered the awardee's proposed price and technical approach in determining that the awardee's proposed price was realistic.
 2. Where the awardee's proposal, on its face, expressly addressed the awardee's proposed compliance with the subcontracting limitation contained in the solicitation, the awardee's compliance with that limitation is a matter of responsibility or contract administration.
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DECISION

Delta-21 Resources, Inc., of Knoxville, Tennessee, protests the award of a contract to Information Systems and Networks (ISN) Corporation, of Bethesda, Maryland, under request for proposals (RFP) No. AG-3198-S-10-0003, issued by the United States Department of Agriculture (USDA), for services to support the Supplemental Nutrition Assistance Program (SNAP).

We deny the protest.

The SNAP, which is the successor to the Food Stamp Program, "provides low-income households with SNAP benefits to purchase food in selected retail stores, namely those that are authorized by [USDA] to participate in SNAP and accept SNAP benefits from households in exchange for food." RFP, Statement of

Objectives (SOO), Operating Constraints, at 4. In order to participate in SNAP, a retail store submits an application to the agency, and the agency collects information through a store site visit to confirm certain of the information provided. Id. The contractor here will supplement the agency's "ability to visit food stores for the purpose of confirming that the stores are eligible" to participate in the SNAP, by conducting site visits and documenting certain observations through "photographs of a store's food sections, a checklist bearing on store appearance and food stock, and a sketch of the store layout." Id. at 5. The solicitation emphasizes that on-site observation is the only function being contracted, with the interpretation of the contractor-supplied material, such as photographs and completed checklists, remaining the responsibility of the agency. Id.

The RFP, issued as a total small business set-aside, provided for the award of a fixed-price, indefinite-delivery/indefinite-quantity (ID/IQ) contract for a base period of 1 year with four 1-year option periods. The RFP stated that the agency would award a contract to the offeror submitting the proposal determined to represent the best value to the government, considering the evaluation factors of: (1) proven plan to achieve efficiency and cost-effectiveness; (2) continuous enhancement of processes and systems(s); (3) management; (4) past performance; and (5) price/cost. The solicitation provided that the non-price/cost factors "when combined, are more important than price/cost." RFP at 48.

The RFP stated that the offerors' price/cost proposals would be evaluated for "price realism and reasonableness," and that as part of this evaluation, the agency would consider the prices per store site visit using the baseline of 25,000 visits per year and excess quantities of 5,000 visits per year as set forth in the pricing worksheets. Offerors were advised that the intent of the price realism evaluation would be to assess whether the prices proposed were realistic and reflected a clear understanding of the work to be performed, and were "consistent with the approach described in the Offeror's technical proposal, the [Department of Labor (DOL)] wage determination and the Service Contract Act [SCA]." RFP at 52.

The agency received proposals from seven offerors. Only Delta-21's and INS's proposals, which received ratings under the non-cost/price factors of "highly acceptable," were included in the competitive range. Agency Report (AR), Tab 9, Source Selection Decision, at 7-8. The agency found in performing its price realism analysis that INS's proposal's total evaluated price of \$16,430,694 was "approximately the same" on a price-per-visit basis as the incumbent contract prices, while Delta-21's proposal's total evaluated price of \$[DELETED] was "significantly higher." Id. at 12.

In light of the "large pricing difference" between the proposals submitted by Delta-21 and INS, the agency requested that both offerors "justify their original proposed prices, and/or provide pricing adjustments." Id. at 14. ISN and Delta-21 provided responses, with Delta-21 explaining that its prices were higher than its own historical

prices as an incumbent contractor because of the solicitation's requirements regarding the DOL wage determinations and SCA requirements. AR, Tab 7, Delta 21 Responses to Agency Questions, at 1; Tab 9, Source Selection Decision, at 14. The agency ultimately concluded that both Delta-21's and ISN's proposed prices were realistic, and determined that ISN's equally-rated, significantly lower-priced proposal, represented the best value to the agency. AR, Tab 9, Source Selection Decision, at 14-15.

Delta-21 argued in its protest that given its proposed price as compared to ISN's, the USDA must have failed to reasonably evaluate ISN's proposal for compliance with the SCA. The agency provided a detailed response to ISN's protest that demonstrated, among other things, that the agency had evaluated ISN's and Delta-21's proposals for SCA compliance and had reasonably determined that both proposals were SCA compliant. AR at 5-7; Tab 9, Source Selection Decision, at 17, 26, 42.

The protester, while conceding that the pricing spreadsheets set forth in ISN's proposal demonstrate SCA compliance, argues in its comments on the agency report that the agency's evaluation remains flawed in that the agency did not reasonably consider whether the greater number of store visits per trip proposed by ISN was realistic. Protester's Comments at 2, 4. Specifically, the protester, based upon its own calculations, argues that an employee performing the maximum number of store visits per day set forth in ISN's proposal would be required to work [DELETED] to [DELETED] hours per day depending on the region. Protester's Comments at 4. The protester, while conceding that "there is no legal limit on the number of hours an employee can work in one day," and that "there would be a way to structure the workload to avoid overtime or lodging costs," argues that "failing to consider these potential costs" and assessing possible noncompliance with the SCA because of ISN's approach when performing a price realism analysis "is a glaring omission." Id.

Price realism need not necessarily be considered in the evaluation of proposals for the award of a fixed-price contract, because these contracts place the risk of loss upon the contractor rather than the government. However, in light of various negative impacts on both the agency and the contractor that may result from an offeror's overly optimistic proposal, an agency may, as USDA did here, provide that a price realism analysis will be performed in order to assess an offeror's understanding of the requirements and/or the risk inherent in a proposal. Health Net Fed. Servs., LLC, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 19. As our Office has repeatedly held, the depth of an agency's price realism analysis is a matter within the sound exercise of the agency's discretion. Navistar Defense, LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al., Dec. 14, 2009, 2009 CPD ¶ 258 at 17. In reviewing protests challenging an agency's evaluation of these matters, our focus is on whether the agency acted reasonably and in a manner consistent with the solicitation's requirements. Id.

The record reflects that in evaluating the proposals of Delta-21 and ISN for price realism, the agency found that a “close[] comparative analysis of the cost structures” set forth in the proposals submitted by Delta-21 and ISN revealed that the wage and fringe benefit rates proposed by Delta-21 and ISN were similar and compliant with the terms of the solicitation. AR, Tab 9, Source Selection Decision, at 14. The agency determined that the difference in the offerors’ total evaluated prices was due primarily to the fact that Delta-21’s reflected a significantly “[DELETED],” and an “inefficiency” with regard to the number of site visits per trip. *Id.* The agency further found that ISN was able to offer a lower price due in part to “its technical advantages,” including “[DELETED].” *Id.* at 15.

We find no basis on this record to conclude that the agency’s evaluation of ISN’s proposal for price realism was unreasonable. Specifically, and as set forth above, the agency communicated with ISN (as well as Delta-21) regarding its proposed prices, and reasonably found, based upon its consideration of ISN’s proposed technical approach, that ISN’s prices were realistic. In our view, the record demonstrates that the agency reasonably satisfied its obligation under the RFP to perform a price realism evaluation, and Delta-21’s disagreement with how the agency conducted its price realism analysis and the agency’s ultimate conclusion that ISN’s prices were realistic, does not establish that the agency’s evaluation and determinations here were unreasonable.

The protester also argues that the agency “failed to evaluate whether ISN’s proposal complied with the limitations on subcontracting clause.” Protester’s Comments at 8.

As a general matter, an agency’s judgment as to whether a small business offeror will be able to comply with a subcontracting limitation presents a question of responsibility. See Spectrum Sec. Servs., Inc., B-297320.2; B-297320.3, Dec. 29, 2005, 2005 CPD ¶ 227 at 6. However, where a proposal, on its face, should lead an agency to the conclusion that an offeror has not agreed to comply with the subcontracting limitation, the matter is one of the proposal’s acceptability. TYBRIN Corp., B-298364.6; B-298364.7, Mar. 13, 2007, 2007 CPD ¶ 51 at 5.

The agency points out that ISN’s proposal expressly addressed that firm’s proposed compliance with the subcontracting limitation by listing the “team members” comprising “ISN Team’s Nationwide Reviewer Network,” and their respective “estimated work share.” Agency Supp. Report at 3; AR, ISN Proposal, vol. I, Tech. Approach, at 31; vol. II, Mgmt. and Past Perf., at 8. ISN’s proposal provides ISN’s “estimated work share” as [DELETED] percent. *Id.* The agency also notes that ISN’s proposal included a Quality Assurance Surveillance Plan, as suggested by the RFP, which provided that ISN would “augment staff to reduce dependency on subcontractors” if necessary to ensure its continued compliance with the

subcontracting limitation. AR, ISN Proposal, vol. II, Mgmt. and Past Perf., at 65. As such, we agree with the agency that there was nothing on the face of ISN's proposal evidencing that ISN had not agreed to comply with subcontracting limitation.

The protest is denied.

Lynn H. Gibson
Acting General Counsel